



**REMARKS**

**I. Status of the Claims**

With entry of this amendment, claims 40-56 are pending in this application. Claims 1-39 are cancelled. Claims 40-56 are rejected. The following rejection is pending:

a. claims 40-56 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement, (Office Action mailed June 12, 2006 ("Office Action"), pages 3-7);

Solely to advance prosecution and without disclaimer of or prejudice to the subject matter recited therein, claim 40 is amended to more particularly describe the claimed subject matter. In addition, claims 54 and 55 have been amended to correct the grammar. The amendments introduce no new matter.

**II. The Claims Are Supported by the Specification**

The Examiner rejects claims 40-56 under 35 U.S.C. § 112, first paragraph, as "failing to comply with the written description requirement, for the reasons of record set forth in the previous Office Action mailed January 4, 2006." Office action, page 3 In the previous Office Action, the Examiner asserted that the claims of the instant invention allegedly contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed. January 4, 2006, Office Action, page 4.

According to the Examiner, "[t]he specification as filed fails to adequately describe a polynucleotide sequence having at least 93% sequence identity to SEQ ID NO: 1 which retains the function of specifically inducing expression in cardiac cells in vivo of a gene which is operably linked to said polynucleotide." 1-4-06 Office Action, page 5. As the Examiner acknowledges, however, "a polynucleotide comprising SEQ ID NO:1 . . . meets the written description provision of 35 U.S.C. 112, first paragraph." *Id.* at 6. Solely to advance prosecution and without disclaimer of or prejudice to the subject matter recited therein, Applicants amend claim 40 to recite "[a]n isolated polynucleotide comprising SEQ ID NO: 1, wherein said polynucleotide comprises at least 92 nucleotides 3' to the transcription start position +1, and wherein said polynucleotide in the absence of inverted terminal repeat sequences from human adeno-associated virus specifically induces expression in cardiac cells *in vivo* of a gene which is operably linked to said polynucleotide."

Accordingly, Applicants request that the rejections of claim 40 and dependent claims 41-56 under 35 U.S.C. § 112, first paragraph, be withdrawn.



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**SUMMARY**

In view of the above amendments and remarks, Applicants submit that this application is in condition for allowance. An early and favorable action is earnestly solicited.

Please grant any extensions of time required to enter this amendment and response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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